



DECISION

Fair Work Act 2009

s.160—Variation of modern award to remove ambiguity or uncertainty or correct error

Variation on the Commission’s own motion—method of adjusting wage-related allowances

(AM2023/3)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT CATANZARITI
COMMISSIONER SPENCER

SYDNEY, 10 MARCH 2023

Section 160 of the Fair Work Act 2009 (Cth) – variation on Commission’s own motion to remove error or uncertainty – Australian Capital Territory Public Sector Enterprise Award 2016 – State reference public sector and enterprise awards – method of adjusting wage-related allowances – determinations issued.

[1] This matter was commenced on the Commission’s own motion to deal with various issues identified in respect of the adjustment of wage-related allowances. On 13 February 2023, we issued a statement (February Statement) outlining each of the issues and expressing *provisional* views as to how to address them. The issues can be summarised as follows:

- an error arising as a result of there having been no adjustment to the overtime allowance at clause F.1.2 of the *Australian Capital Territory Public Sector Enterprise Award 2016* (ACTPSE Award) since the award’s commencement on 6 June 2016;
- an error or uncertainty in respect of a number of wage-related allowances in certain modern enterprise and State reference public sector modern awards, inclusive of the overtime allowance in the ACTPSE Award, which are expressed only as dollar figures and not percentages of the standard rate; and
- an error or uncertainty in respect of the standard approach to describing the adjustment of wage-related allowances across modern awards more broadly as dollar amounts “*based on a percentage of the standard rate*” where they are better understood as the given percentage of the standard rate.

[2] A schedule of draft determinations to give effect to our *provisional* views was published concurrently with the February Statement. Interested parties were invited to file submissions in response to the draft determinations by 4:00 pm (AEDT) on Tuesday, 28 February 2023.

[3] We received one submission in response from the Association of Digital Service Providers Australia New Zealand (ADSPANZ). The ADSPANZ was broadly supportive of resolving the issue identified concerning the standard approach to describing the adjustment of wage-related allowances across certain modern awards but sought further clarification as to the rounding approach within the identified awards. The ADSPANZ submitted that including this clarification in the identified awards would ensure consistent rounding is applied, especially within payroll, rostering, time and attendance software.

[4] We do not intend to deal with the submission from the ADSPANZ concerning rounding in this decision because it concerns a different subject matter. However, we will give consideration as to whether this issue should be the subject of a separate proceeding at some time in the future.

[5] We confirm our provisional views at [11], [15] and [19] of the February Statement. We consider that the variations to the overtime allowance in the ACTPSE Award and in respect of a number of wage-related allowances in certain modern enterprise and State reference public sector modern awards are necessary to remove error and uncertainty. We also consider the variation to the standard approach to describing the adjustment of wage-related allowances across modern awards more broadly to be necessary to remove error and uncertainty.

[6] Determinations varying 135 modern awards will be published with this decision. The operative date of the determinations will be 15 March 2023.



PRESIDENT

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